

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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MAY 16 1996

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In the Matter of )  
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**IMPLEMENTATION OF THE LOCAL  
COMPETITION PROVISIONS IN  
THE TELECOMMUNICATIONS ACT  
OF 1996** )  
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CC Docket No. 96-98

To: Common Carrier Bureau

**COMMENTS OF METRICOM**

Metricom, Inc. ("Metricom"), by its attorneys, hereby submits these Comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding (the "Notice"). As discussed below, Metricom urges the Commission to forbear from requiring non-dominant telecommunications carriers to interconnect with other carriers because the competitive marketplace ensures that these carriers will interconnect when it is in the public interest for them to do so.

1. Metricom is a young, rapidly expanding, technologically innovative company based in Silicon Valley. Metricom is a pioneer in the development of state-of-the-art, spread spectrum, unlicensed data communications systems operating

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under Part 15 of the Commission's Rules and Regulations. Metricom's frequency hopping, spread spectrum systems – at the leading edge of technology – offer a unique, license-free wireless solution providing cost-effective, intelligent and flexible local and wide area (regional) data communications for a variety of important applications in the public interest.

2. The *Notice* proposes to impose obligations upon certain telecommunications providers, pursuant to the Telecommunications Act of 1996 (the "1996 Act"), to interconnect with the facilities and equipment of other telecommunications providers.<sup>1/</sup> The *Notice* is directed to three categories of telecommunications providers: incumbent local exchange carriers<sup>2/</sup> ("incumbent LECs"), LECs<sup>3/</sup>, and telecommunications carriers.<sup>4/</sup>

3. In these Comments, Metricom responds to the Commission's request for comments regarding the type of interconnection requirements that should be imposed upon telecommunications carriers.<sup>5/</sup> Section 251 of the 1996 Act provides, *inter alia*,

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<sup>1/</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, sec. 101, § 251.

<sup>2/</sup> The 1996 Act defines an incumbent LEC in a particular area as the local exchange carrier and member of the exchange carrier association that provided telephone exchange service in that area on the date of enactment of the 1996 Act. 47 U.S.C. § 252(h)(1) (1996).

<sup>3/</sup> The 1996 Act defines a local exchange carrier as any person that is engaged in the provision of telephone exchange service or exchange access, except for commercial mobile service providers.

<sup>4/</sup> Section 3(44) of the 1996 Act defines a telecommunications carrier as any provider of telecommunications services. 47 U.S.C. § 153(44) (1996).

<sup>5/</sup> See *Notice*, ¶ 248.

that each telecommunications carrier has the duty to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers.<sup>6/</sup>

4. Metricom urges the Commission to exercise its authority under Section 10 of the 1996 Act<sup>7/</sup> to forbear from imposing any interconnection requirement upon non-dominant telecommunications carriers because non-dominant carriers have no incentive to deny interconnection to other telecommunications carriers on reasonable terms. As the Commission noted in proposing to eliminate tariff filings for non-dominant carriers:

The economic underpinning of our proposal to streamline the regulatory procedures for nondominant carriers flows from the fact that firms lacking market power simply cannot rationally price their services in ways which, or impose terms and conditions which, contravene . . . the [Communications] Act [of 1934].<sup>8/</sup>

The Commission relied upon commercial mobile radio service ("CMRS") providers' lack of market power in deciding not to impose interstate interconnection requirements upon CMRS providers.<sup>9/</sup> In reaching this conclusion, the Commission noted that "[t]he fact that interconnection is already available through LEC facilities reduces the potential for CMRS providers to use denial of interconnection as an anticompetitive tool against their

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<sup>6/</sup> 47 U.S.C. § 251(a) (1996).

<sup>7/</sup> 47 U.S.C. § 160(a) (1996).

<sup>8/</sup> *Policy and Rules Concerning the Interstate, Interexchange Marketplace, Notice of Proposed Rulemaking*, FCC 96-123, CC Docket 96-91 (rel. March 25, 1996), quoting *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor, First Report and Order*, 85 FCC 2d 1, 31 (1980).

<sup>9/</sup> See *Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, Second Notice of Proposed Rulemaking*, 10 FCC Rcd 10666, 10682 (1995).

competitors."<sup>10/</sup>

5. By contrast, incumbent LECs have the incentive and ability to deny access to their interconnection and network elements for strategic reasons because they have market power in the provision of local exchange service and, unlike non-dominant telecommunications carriers, do not presently compete significantly with other carriers offering the same or similar service. Nor do incumbent LECs have to adjust to competing demands of the local marketplace.

6. Section 10 of the 1996 Act grants the Commission authority to forbear from imposing certain regulation on a carrier or class of carriers upon the Commission's determination that the following conditions exist: (1) enforcement of the regulation is not necessary to ensure that the telecommunications carriers' practices are neither unjust or unreasonable nor unjustly or unreasonably discriminatory; (2) enforcement of the regulation is not necessary for the protection of consumers; and (3) forbearance from applying the regulation is consistent with the public interest.<sup>11/</sup> All of the factors necessary for the Commission to forbear from imposing interconnection requirements

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<sup>10/</sup> *Id.*

<sup>11/</sup> 47 U.S.C. § 160(a) (1996). See also *Implementation of Sections 3(n) and 332 of the Communications Act*, Second Report & Order, 9 FCC Rcd 1411, 1479 (1994), erratum, 9 FCC Rcd 2156 (hereinafter "CMRS Order"). In the CMRS Order, the Commission decided to forbear from applying certain amended provisions of the Communications Act of 1934 upon commercial radio service ("CMRS") providers following a determination that CMRS providers do not unjustly discriminate in their rates and that CMRS providers operate in a competitive environment. Non-dominant telecommunications carriers also operate in an increasingly competitive environment, with resellers providing interexchange service and cable service providers seeking authority to provide interexchange service.

upon non-dominant telecommunications carriers are present in this instance.

7. First, requiring non-dominant telecommunications carriers to provide interconnection is not necessary to ensure that the carriers' practices are neither unjust or unreasonable nor unjustly or unreasonably discriminatory. Non-dominant telecommunications carriers unlike incumbent LECs, do not have market power over the facilities that deliver service to customers in local markets. Instead, non-dominant telecommunications carriers compete openly and evenly with one another and with incumbent LECs in the services they provide and the customers they reach. Business and economic necessity prevent non-dominant telecommunications carriers from engaging in unjust or unreasonable practices. As the Commission has previously noted, "in a competitive market, market forces are generally sufficient to ensure the lawfulness of . . . terms and conditions of service set by carriers who lack market power. Removing or reducing regulatory requirements also tends to encourage market entry and lower costs."<sup>12/</sup>

8. Second, requiring non-dominant telecommunications carriers to provide interconnection is not necessary for the protection of consumers. Competition among carriers establishes the prices and practices of these carriers. Therefore, requiring non-dominant telecommunications carriers to provide interconnection, rather than enhancing competition, would result only in unnecessary regulation that would provide no benefit to the public.

9. Finally, forbearing from requiring non-dominant telecommunications

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<sup>12/</sup> CMRS Order, 9 FCC Rcd at 1478.

whether forbearance is in the public interest, the 1996 Act requires the Commission to consider "whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services."<sup>13/</sup> Forbearing from imposing interconnection requirements upon non-dominant telecommunications carriers will promote competition in two ways: (1) by enabling these carriers to adapt their services to the marketplace more efficiently; and (2) by reducing the costs that will be passed on to the subscribing public by unnecessary regulatory burdens. Allowing non-dominant telecommunications carriers the option to choose whether or not to provide interconnection will lead to more diverse service offerings by these carriers because each carrier will evaluate the needs of their individual market and subscribers in deciding whether interconnection will be beneficial to their operations. This, in turn, will lead to more diverse service offerings from which the public can choose when selecting a carrier.

10. The Commission recognized in the *Notice* that the purpose of the 1996 Act is to "remove both the statutory and regulatory barriers and economic impediments that inefficiently retard entry [to the local exchange markets]."<sup>14/</sup> Non-dominant telecommunications carriers do not present a barrier to entry into the local exchange markets, nor do they retard entry into the local exchange markets. Therefore, the Commission should not impose new regulations upon non-dominant telecommunications

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<sup>13/</sup> 47 U.S.C. § 401 (1996).

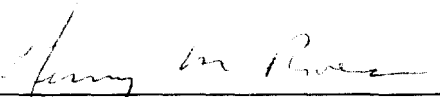
<sup>14/</sup> *Notice*, ¶ 12.

carriers when the intent of the 1996 Act is to enhance competition, not create additional regulatory burdens for entities that presently compete in the local marketplace.

**WHEREFORE**, in light of the foregoing, Metricom respectfully requests that the Commission exercise its authority under Section 10 of the 1996 Act to refrain from imposing interconnection requirements upon non-dominant telecommunications carriers.

Respectfully submitted,

**METRICOM, INC.**

By: 

Henry M. Rivera

Larry S. Solomon

J. Thomas Nolan

**GINSBURG, FELDMAN & BRESS, CHARTERED**

1250 Connecticut Avenue, N.W.

Washington, D.C. 20036

(202) 637-9000

Its Attorneys

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